

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

WINFORD DALLAS JONES,	:
Plaintiff	:
v.	:
C. H. ROBINSON WORLDWIDE, INC., <i>et al.</i> ,	:
Defendants/Third Party Plaintiffs	:
v.	:
AKJ ENTERPRISES, INC., d/b/a Unlimited Express	:
and	:
ELSON BOLAR	:
and	:
DIONNIE BOLAR,	:
Third Party Defendants.	:
	:

PLAINTIFF'S OBJECTION TO DEFENDANT'S
PROPOSED JURY INSTRUCTIONS

COMES NOW, Plaintiff, Winford Dallas Jones, by counsel, and notes the following objection to Defendant C. H. Robinson Worldwide, Inc.'s proposed jury

instructions filed with the Court on April 29, 2008.

1. Plaintiff objects to the jury instruction attached hereto as "Exhibit A," which fails to correctly define the cause of action for the negligent hiring of an independent contractor, either under *Phillip Morris, Incorporated v. Emerson*, 235 Va. 380, 398-400, 368 S.E. 2d 268, 277-278 (1988) (a portion of which deals with the tort of negligent hiring, as opposed to negligent retention or other torts, which are also addressed in that case) or §411 of the Restatement (Second) of Torts, upon which the *Philip Morris* Court relied. Defendant appears to be incorporating language from §308 of the Restatement (Second) of Torts, which involves the cause of action of negligent entrustment of an activity, and which cause of action is no longer pending in this case.

2. Plaintiff reserves the right to amend his objections in the event that Defendant were permitted by the Court to amend its proposed instructions and/or to conform with any further details of the Court's oral ruling on April 28, 2008, set forth in the Court's written opinion or Order.

Respectfully submitted,

WINFORD DALLAS JONES

s/ Timothy E. Kirtner
Of Counsel

Gary C. Hancock, VSB #16704
Timothy E. Kirtner, VSB #36938

Ann L. Bishop, VSB #43847
GILMER, SADLER, INGRAM, SUTHERLAND & HUTTON
P. O. Box 878, 65 East Main Street
Pulaski, VA 24301
540/980-1360 (telephone)
540/980-5264 (facsimile)

Byron R. Shankman, VSB #13485
P. O. Box 1859
Dublin, VA 24084

Counsel for Plaintiff, Winford Dallas Jones

CERTIFICATE OF SERVICE

I do hereby certify that I have this 29th day of April 2008 electronically filed the foregoing Plaintiff's Objections to Defendant's Proposed Jury Instructions with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Paul C. Kuhnel, Esquire, and Robert M. Doherty, Esquire, Wooten Hart PLC, P.O. Box 12247, Roanoke, Virginia 24024-2247, Counsel for C.H. Robinson Worldwide, Inc.; C. H. Robinson Company; C. H. Robinson Company Inc.; C. H. Robinson Company LP; C. H. Robinson International, Inc.; C. H. Robinson Operating Company LP; and C. H. Robinson Transportation Company Inc.

s/ Timothy E. Kirtner
Timothy E. Kirtner
Gilmer, Sadler, Ingram, Sutherland & Hutton
P. O. Box 878, 65 East Main Street
Pulaski, VA 24301
540/980-1360, extension 29 (telephone)
540/980-5264 (facsimile)
tkirtner@gsish.com